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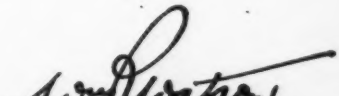
THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

The New York Supreme Court, Appellate Division, has held that the right of a preferred stockholder to unpaid accrued dividends is a contractual, vested right, which may not be cancelled, under existing law, as to a non-assenting stockholder. (See page 391.) A Federal Court sitting in Pennsylvania has ruled that a reorganization plan providing for an optional exchange of preferred stock, on which accumulated dividends were unpaid, for new prior preferred stock and other securities, was valid. (See page 393.)

In an Alabama case involving the inspection of corporate books of a foreign corporation in the custody of officers in Alabama, inspection was permitted where the stockholder desired data in order to call a meeting of stockholders. (See page 394.) In Delaware, a stockholder, acting in good faith, was held entitled to inspect the corporate records by the Superior Court. (See page 390.) In Ohio, the assessment of a substantial statutory penalty against a corporation for refusal to permit a stockholder to inspect its records, was upheld. (See page 393.)



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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

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What Constitutes Doing Business

Holding Real Estate Mortgages

An unlicensed foreign corporation holding a mortgage on lands within a state has been permitted to maintain suit upon such a mortgage in the state's courts in many instances. Frequently, the courts rule that the transaction, being a single act, does not amount to the carrying on of business contrary to the pertinent statute,[1] while in other instances the transaction is regarded as an out-of-the-state activity, even though relating to property within the state, in connection with which suit may be maintained.[2]

Where, however, an unlicensed foreign corporation has entered a state for the purpose of conducting the general business of loaning money and taking mortgages on real property as security, or where such a corporation has conducted a local business apart from its mortgage negotiations, the courts have naturally ruled that because intrastate business was carried on contrary to the statutes, suits on the mortgages could not be maintained.[3] States denying unlicensed foreign corporations the right to maintain actions on contracts arising out of intrastate business are: Alabama, Arizona, Arkansas, Idaho, Iowa, Michigan, Mississippi, Missouri, New York, Oklahoma, South Dakota, Texas, Utah, Vermont, Wisconsin and Wyoming.

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[1] *Western Loan & Bldg. Co. v. Elias Morris & Sons Co. et al.*, (Ariz.) (1934) 29 P. 2d 137; *Moran v. Union Sav. Bank & Trust Co.*, (Ark.) (1936) 97 S. W. 2d 638; *Equitable Trust Co. of N. Y. v. Western Land & Power Co.*, (Cal.) (1918) 176 Pac. 876; *Roseberry v. The Valley Building & Loan Assn.*, (Colo.) (1905) 35 Colo. 132; *City Ice Co. of Kansas City v. Quivira Development Co. et al.*, (Kan.) (1934) 30 P. 2d 140; *Maxwell v. Hammond et al.*, (Mich.) (1926) 208 N. W. 443; *Dime Savings & Trust Co. v. Humphreys*, (Okla.) (1936) 53 P. 2d 665; *Keene Guaranty Savings Bank v. Lawrence*, (Wash.) (1903) 32 Wash. 572. (In Alabama, a single act has been held "doing business." *Farrior v. New England Mortgage Security Co.*, (1889) 88 Ala. 275.)

[2] *Worth et al. v. Knickerbocker Trust Co.*, (Ala.) (1911) 171 Ala. 621; *National Bank of Wichita v. Spot Cash Coal Co.*, (Ark.) (1911) 98 Ark. 597; *Continental Assurance Co. v. Ihler et al.*, (Idaho) (1933) 26 P. 2d 792; *Hughes v. R. O. Campbell Coal Co. et al.*, (Ky.) (1924) 258 S. W. 671; *American Freehold Land-Mortgage Co. v. Pierce*, (La.) (1897) 21 So. 972; *Manhattan & Suburban Savings & Loan Assn. v. Massarelli et al.*, (N. J.) (1899) 42 Atl. 284; *Peoples Building Loan & Savings Assn. v. Berlin*, (Pa.) (1901) 201 Pa. 1; *Erwin National Bank v. Riddle*, (Tenn.) (1934) 79 S. W. 2d 1032; *Security Co. v. Panhandle National Bank*, (Tex.) (1900) 93 Tex. 575.

[3] *Chattanooga National Building & Loan Assn. v. Denson*, (Ala.) (1903) 189 U. S. 408, 23 S. Ct. 630; *Sullivan, Receiver, etc. v. Vernon et al.*, (Ala.) (1898) 121 Ala. 393; *John Hancock Mutual Life Ins. Co. v. Girard*, (Idaho) (1937) 64 P. 2d 254; *The People's Building, Loan & Savings Assn. v. Markley et al.*, (Ind.) (1901) 27 Ind. App. 128; *National Mercantile Co. v. Watson, Corp. Com'r., et al.*, (Ore.) (1914) 215 Fed. 929; *British-American Mortgage Co. v. Jones*, (S. C.) 58 S. E. 417; *Dunn v. Utah Serum Co.*, (1925) 238 Pac. 245.

Domestic Corporations

Delaware.

Stockholder, acting in good faith, ruled by Superior Court entitled to inspect corporate records. The relator, a stockholder of defendant company, sought to assert his statutory right to inspect the stock ledger and to make a copy of the list in an action in the Delaware Superior Court. The reasons given for the proposed examination were that relator might communicate with the other stockholders (1) to inform them concerning a pending derivative action instituted by relator in the Chancery Court, (2) to ascertain whether any of them desired to join in the derivative litigation and (3) to determine whether the stockholders desired to effect a change in the personnel of the board of directors at the next annual meeting of the stockholders and to solicit proxies for that purpose. Permission had been denied by the defendant because, in view of the pending litigation, it regarded the purposes as improper. The court granted relator's motion for a writ of mandamus, finding nothing in the record to indicate that the relator was not acting in good faith. The court observed: "The right of a stockholder of a Delaware corporation under the statute is absolute unless the corporation is able to show that the purpose of examination is to gratify idle curiosity, or is for an improper or unlawful purpose, or for a purpose purely individual and in no way germane to the relationship of stockholder to the corporation." "The stockholder's right exists and persists without regard to the pendency of an action brought by him against the corporation. It is a right distinct and apart from litigation; and the defendant corporation, for that reason alone, cannot assume to limit or abridge the right." *State ex rel. Foster v. The Standard Oil Co. of Kansas,* 18 A. 2d 235. Commerce Clearing House Court Decisions Requisition No. 252989. Harold B. Howard of Hering, Morris, James and Hitchens of Wilmington, for the relator. Aaron Finger of Richards, Layton and Finger of Wilmington, for the defendant.

Illinois.

Illinois Appellate Court rules that an Illinois corporation, which had been dissolved for failure to file annual reports and pay the franchise tax, may apply for reinstatement and the Attorney General may move to have the dissolution order vacated. Defendant corporation had been dissolved for failure to file its annual reports and to pay its franchise tax, after the filing of an information by the Attorney General. The sheriff had endeavored to serve the company without success and the Attorney had proceeded to obtain service by publication. On June 15, 1935, the decree was entered dissolving the company. In November, 1939, the chairman of the board of the company filed a petition in which it was indicated that the company, unaware of the dissolution proceedings, had continued

to operate as a corporation, and desired to take steps to reinstate itself, asking that the notice of publication and decree of dissolution be vacated and the complaint to dissolve the company be dismissed. A decree was then entered vacating the decree of dissolution as of June 15, 1935. In December, 1939, appellant stockholder, upon leave of court, intervened, moving to vacate this last decree of the court, in order that the company might remain dissolved. After the filing of additional pleadings by the Attorney General and the chairman of the board, Joseph Linhart, by name, the Illinois Appellate Court, First District, affirmed the lower court, observing: "From the record it appears that the order vacating the order of dissolution of the corporation was entered with the consent of the Attorney General. Appellant argues that Joseph Linhart had no authority from the corporation to make the motion to vacate the dissolution order. The Attorney General did not question the right of Linhart to represent the corporation, and if the Attorney General was of the opinion that justice required that the order of dissolution be vacated, he had the undoubted power to consent to the entry of the order vacating the order of dissolution. Indeed, the Attorney General, in a case like the instant one, might of his own motion have had the dissolution order vacated if facts came to his knowledge that showed that the dissolution order should not have been entered." The court regarded the intervening stockholder as without standing to ask that the company be held to be dissolved. "It is the settled law of this state," said the court, "that in a proceeding like the instant one only the State can insist upon a forfeiture of the franchise of the corporation." *People ex rel. Cassidy v. Karban & Co., Inc. (Preisler, intervening petitioner),** Illinois Appellate Court, First District, November 26, 1940. Commerce Clearing House Court Decisions Requisition No. 249533. J. H. Silver and S. F. Brown, for appellant. James J. Hajek, for Karban & Co., Inc.

* The full text of this opinion is printed in **The Corporation Tax Service**, Illinois, page 1405.

New York.

Right of preferred stockholder to unpaid dividends, accrued through lapse of time, ruled a contractual, vested right, which could not be cancelled under existing law as to a non-assenting stockholder. "The principal question presented," said the New York Supreme Court, Appellate Division, Second Department, "is whether, without his consent, the holder of preferred stock of a corporation may be deprived of his right to accrued cumulative dividends as an incident to a statutory proceeding to reclassify the corporation's capital stock (Stock Corporation Law, sec. 36)." In 1937, following an uncompleted attempt in 1936 to effect a reorganization of defendant company, a reorganization was consummated by the filing of a certificate under sec. 36, Stock Corporation Law to reclassify the stock. All stockholders, except plaintiff's assignor and two others, assented

either by voting in favor of it or by subsequently accepting the new in exchange for the old stock. At the time of the stockholders' meeting on March 30, 1937, at which the plan was approved by holders of more than two-thirds of the capital stock, plaintiff held $100. preferred stock, holders of which were entitled to receive annually "when and as declared from surplus or net profits of the company," cumulative dividends of 7 per cent. before dividends could be paid to holders of the common stock. At that time, unpaid cumulative dividends amounted to $56.29 per share. Under the plan, four shares of new preferred stock were to be issued in exchange for each share of the old preferred stock "and in satisfaction of all accrued unpaid dividends" thereon. Plaintiff sought to have declared void the action of defendants in eliminating the dividends which had accrued on his preferred stock up to March 30, 1937 and to enjoin payment of dividends on any of the capital stock without first liquidating all arrears of dividends so accrued on his stock, in addition to asking for other relief. The court, reversing a judgment of the Supreme Court, Nassau County, dismissing the complaint, held that "the statute does not expressly or impliedly authorize the cancellation of a non-assenting stockholder's right to unpaid dividends which have accrued through lapse of time. That the right to such dividends is a contractual, vested right is well settled in this state." "Plaintiff is entitled to relief to the extent of declaring that the accrued cumulative dividends on his preferred stock, which, up to March 30, 1937, amounted to $56.29 per share, have not been affected by the reorganization and enjoining defendants from paying dividends upon any of the capital stock without first providing for and liquidating the arrears of dividends which up to March 30, 1937, accrued on his preferred stock." *Wiedersum v. Atlantic Cement Products, Inc. et al.*, 25 N. Y. S. 2d 496. Commerce Clearing House Court Decisions Requisition No. 254377. C. Walter Randall of New York City, for appellant. Eugene A. Sherpick (Harold R. Medina and James J. Regan, on the brief), of New York City, for respondents.

Action for dividends declared between 1914 and 1922 held barred under six-year statute of limitations. Section 48, subd. 1, of the Civil Practice Act provides for a limitation of six years after a cause of action has accrued within which the action must be commenced. Plaintiff executors commenced an action to recover dividends which had been payable more than sixteen years before their claim was made. During the time the dividends had been payable, between 1914 and 1922, and up to the time of the claim, the stock had stood, not in the name of plaintiffs' decedent, but in the name of another individual, to whom the dividends had not been paid because he could not be located at his address appearing on the books of the corporation or at any other place. The demand followed plaintiffs' presentation of a certificate for transfer in 1938, after their decedent and his estate had been in possession of it since 1913, which was prior to the period during which the dividends had been declared. The defendant company in its answer affirmatively pleaded the statute

of limitations. The Supreme Court of New York, Appellate Division, First Department, ruled the claim was barred by the statute, observing that the right to make a demand for the dividends was complete when each dividend became payable and that, under Section 15 of the Civil Practice Act, "the time within which the action must be commenced must be computed from the time when the right to make the demand is complete." As not only six years, but sixteen years, had elapsed, the complaint was ordered dismissed. *Jaques et al. v. White Knob Copper & Development Co., Ltd.*, 23 N. Y. S. 2d 326. Commerce Clearing House Court Decisions Requisition No. 247285. Henry M. Hogan (Gerard C. Smith, of counsel), of New York City, for appellant. Herman Goldberg (George W. Israel, of counsel), of New York City, for respondents.

Ohio.

Assessment of substantial statutory penalty against corporation for refusal to permit stockholder to inspect records, upheld. Plaintiff stockholder, in the lower court, sought a mandatory injunction to require the defendant corporation to permit him to inspect the corporate books and records, which privilege, he alleged, had been denied. That court gave judgment for the plaintiff, issuing a mandatory injunction, and assessed the defendant a net penalty of $950 under Sec. 8623-127, General Code, for having refused the stockholder's demand. The Court of Appeals, Huron County, affirmed the judgment, finding justification for the assessment of the penalty in Sec. 8623-127, which provides for a penalty of $100 "and the further penalty of ten dollars ($10) for every day, beginning three days after written request," the refusal having continued for a period of nearly a year and a half. The lower court had assessed the full penalty of $4,950, and then suspended $4,000 of it, conditioned upon a compliance with the injunction. This penalty the Court of Appeals indicated was neither unreasonable nor an abuse of discretion. *Flowers v. Rotary Printing Co.*, 31 N. E. 2d 251. Young & Young of Norwalk, for appellant. Thompson, Hine & Flory and Jerome C. Fisher of Cleveland, for appellee.

Pennsylvania.

Reorganization plan, providing for optional exchange of preferred stock, on which accumulated dividends were unpaid, for new prior preferred and other securities, ruled valid. Plaintiff purchased 100 shares of $7. cumulative no par preferred stock of the corporate defendant in February, 1940, upon which unpaid dividends had accumulated from 1933 to 1939, inclusive, amounting to approximately $16.87½ per share. At that time, the only other type of stock of the company existing was common stock, upon which no dividends had been paid since 1932. Incorporated in plaintiff's contract and printed on the preferred certificates was a provision that prior equities would not be issued without a two-thirds consent of the preferred shareholders.

More than such consent was obtained through the submission of a reorganization plan in July, 1940. Under this plan, the preferred stockholders were asked to surrender their shares for cancellation, including the dividends accrued thereon to July 1, 1940, in exchange for the following for each share surrendered: a $10 share in a debenture, payable in fifteen years, yielding 3%, with provision for amortization, one share of prior preferred stock carrying fixed cumulative dividends of $3. per year and an additional dividend of $1. per year payable and cumulative to the extent earned, with an equal voting right with the common stock. It was also provided that in the event a holder of the $7. cumulative preferred did not wish to exchange under the plan, he could retain his shares with his right to a dividend on them as well as the accumulated dividends, subordinate however, in priority to the $10. debenture and the 3% or 4% (as the earnings might warrant) of the new prior preferred stock, but payable before any dividend could be payable on any of the common stock. The plaintiff sought to restrain the declaration of dividends on the new prior preferred stock and to have that issue and the new debentures declared void, among other relief. The United States District Court, Eastern District of Pennsylvania, denied the relief sought and ruled that the plan was a valid one. It regarded the exchange as a voluntary and not a compulsory exchange. "It is to be borne in mind," said the court, "that the plan does not purport to extinguish any of the rights of the preferred stock nor to require that stock to be converted into any other stock, nor to require its exchange for anything in substitution." "It seems to me," the court concluded, "that the preferred stock under the contract only had preference over the common stock, and it was not provided that it was to be free from the burden of the preferences of other classes of stock which might be created. It was senior among the class of stock which was then authorized under the contract with the stockholders. It is now junior to two new classes. What has occurred therefore is that the preference which it had originally enjoyed has been changed or altered, not however in relation to the common stock, for the preference over it is in no wise affected. However, in relation to earnings and assets, it stands no longer first but third. However, no valid objection can be raised to this since this was a condition upon which the complainant as a preferred stockholder purchased his shares." *Johnson v. Fuller et al.*, 36 F. Supp. 744. Commerce Clearing House Court Decisions Requisition No. 252715. Seymour M. Heilbron of Philadelphia and Arthur Garfield Hays of New York, for plaintiff. Evans, Bayard & Frick, Charles E. Kenworthey, Francis H. Scheetz and Robert Gibbon, of Philadelphia, for defendants in error.

Foreign Corporations

Alabama.

Inspection of books of a foreign corporation in the custody of officers in Alabama allowed where data was desired in order to call

a meeting of stockholders. Petitioner, an Alabama corporation which was a stockholder in a foreign corporation of which respondents were officers, sought to inspect, by its duly authorized agent, the stock books of respondents' company in Alabama in the custody of respondents and to make extracts. The request had been refused. The lower court had granted a writ of mandamus to the petitioner. This ruling was affirmed by the Supreme Court of Alabama. The court noted that "for ground of refusal respondents allege the request was for an improper and unlawful purpose, in that, it was desired to obtain a list of the stockholders for the purpose of calling, or attempting to call, a meeting of stockholders to determine what action they wished to take to enforce payment of dividends on the preferred stock." The court observed that "a meeting of stockholders for conference, and concerted action in keeping with their legal status and right is entirely consistent with any facts disclosed." *Loveman et al. v. Tutwiler Inv. Co.*, 199 So. 854. Leader, Hill & Tennebaum of Birmingham, for appellants. A. Leo Oberdorfer of Birmingham, for appellee.

Kentucky.

Service upheld where made on agent authorized to effect appointment of distributor in state. Service of process upon a Florida corporation was made in Kentucky by serving there its representative who was authorized to enter into arrangements whereby plaintiff became the corporation's distributor for several counties. The action involved a breach of the contractual obligations arising out of those arrangements. The United States District Court, W. D. Kentucky, Paducah Division, after concluding that the representative was sent into Kentucky for the express purpose of effecting the distributor's appointment, which action was not subject to approval at the home office before it became effective, upheld the service on the ground that the representative had considerably more authority than that of a mere traveling salesman and that under the facts the corporation was doing business in Kentucky. *Williams v. Bruce's Juices, Inc.*, 35 F. Supp. 847. Nat Ryan Hughes of Murray, Ky., and Roy M. Shelbourne (of Wheeler & Shelbourne) of Paducah, Ky., for plaintiff. McMurray & Reed of Paducah, Ky., for defendant.

Maryland.

Qualified foreign company with extensive activities in Maryland ruled subject to suit in federal court there in equity action involving patent claim. Defendant New York company carried on its principal business and executive activities in Maryland, where it was authorized to do business and had appointed a resident agent for the service of process. Sued by a resident of New Jersey in a federal court in an equity action involving a patent claim, defendant moved to dismiss the complaint by raising a question of venue jurisdiction. The United States District Court, District of Maryland, noted that "in the present case the general jurisdiction arises under the patent

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statutes enacted by Congress, where the jurisdiction of the federal courts is exclusive" and that "the question is purely one of a deducible inference of fact, that is, whether the consent to be sued as expressed in the defendant's compliance with the Maryland foreign corporation law, in connection with the great extent of its business activities within the state is a consent to be sued in the federal district court for Maryland as well as in the Maryland state courts." The court also observed that "there are numerous federal decisions that the applicable venue statute is section 112 of Title 28, USCA, which provides that the suit must be brought in a district of which the defendant 'is an inhabitant' " and that "it is still the generally accepted judicial view that a corporation is an inhabitant of only that state where it is incorporated; but it is well established that the venue provision of section 112, Title 28, USCA, is a personal privilege of the defendant, and therefore may be waived by him. *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U. S. 165." The court concluded that there had been a waiver of this personal privilege under the facts in this case and overruled the motion to dismiss the complaint. *Vogel v. Crown Cork & Seal Co., Inc.*,* United States District Court, District of Maryland, December 23, 1940, Commerce Clearing House Court Decisions Requisition No. 250650. Edwin F. Samuels of Baltimore, for the plaintiff. Albert E. Donaldson of Hershey, Donaldson, Williams & Stanley, of Baltimore, for the defendant.

* The full text of this opinion is printed in **The Corporation Tax Service**, Maryland, page 314.

New Jersey.

Authority of traveling salesman of foreign corporation to make binding contracts in state ruled to make service of process upon him effective against company. In *Weiss v. Shapiro Candy Mfg. Co., Inc.*, 13 A. 2d 304, (The Corporation Journal, December, 1940, page 278), the Supreme Court of New Jersey held that where service of process upon a foreign corporation was made upon its traveling salesman, who lived in New York, and had authority to close contracts solicited in New Jersey, such service made upon him in New Jersey constituted valid service under the statute upon a "servant of the corporation within this state and acting in the discharge of his duties." Upon appeal, the Court of Errors and Appeals of New Jersey has affirmed this ruling. *Weiss v. Shapiro Candy Mfg. Co., Inc.*,* New Jersey Court of Errors and Appeals, January 28, 1941. Commerce Clearing House Court Decisions Requisition No. 252738; 18 A. 2d 706. Louis Santorf and Marcus & Levy of Paterson, for plaintiff-respondent. Edward A. Markley, Charles W. Broadhurst and Collins & Corbin of Jersey City, for defendant-appellant.

* The full text of this opinion is printed in **The Corporation Tax Service**, New Jersey, page 507.

Service upon alleged manager vacated upon proof that he performed no managerial duties. Service of process against a foreign trade newspaper corporation was attempted by serving in New Jersey one who was listed as its manager on the masthead of the paper. The court found, however, that the proofs showed that this person performed no managerial duties and that he merely solicited advertisements and gathered news. These were sent to the home office in New York for acceptance or rejection. The Supreme Court of New Jersey ruled that the company was not thereby doing business in New Jersey. The court found further support in its action in vacating an interlocutory judgment entered by default in the lower court in the fact that service had been made on the supposed manager as an individual rather than as a manager and that there was no proof to indicate that the cause of action arose out of any business with which the alleged manager, as agent for the corporation, had any connection. *Deighan v. Beverage Retailer Weekly & Trade Newspaper Corp. et al.,** 16 A. 2d 612. Commerce Clearing House Court Decisions requisition No. 248950. Louis A. Schiffman of Carlstadt and Feder & Rinzler of Passaic (Jack Rinzler of Passaic, of counsel), for the rule. William A. O'Brien of Jersey City, opposed.

* The full text of this opinion is printed in **The Corporation Tax Service**, New Jersey, page 505.

Oklahoma.

Shipment of goods on consignment, to be sold on commission, ruled not doing business. The Supreme Court of Oklahoma has held that where a foreign corporation shipped goods on consignment to a citizen of Oklahoma to be sold on commission and the proceeds were to be accounted for under a contract between the parties, providing that periodical remittances were to be made by the consignee, such dealings did not constitute doing business in Oklahoma so as to require compliance by the foreign corporation with Section 130, O. S. 1931, 18 Okla. St. Ann. Sec. 452. *Universal Oil Corporation et al. v. Falls Rubber Co. of Akron, Inc.,** 110 P. 2d 296. Commerce Clearing House Court Decisions Requisition No. 252215. Ray S. Fellows and Charles R. Fellows of Tulsa, for plaintiffs in error. Fist, Dewberry & Bragg of Tulsa, for defendant in error.

* The full text of this opinion is printed in **The Corporation Tax Service**, Oklahoma, page 514.

Taxation

Connecticut.

Amounts received by lessee corporation from its subtenants ruled to constitute income under income tax statute which disallowed "rent paid" as a deductible item. Sec. 4 of Ch. 221, L. 1935, (Cum. Supp. 1935, Ch. 66b, sec. 419c) imposing the Corporation Business

Tax based on net income, contains a provision that rent paid during the income year is not a deductible item in arriving at taxable net income. Plaintiff corporation had rented a building in New Haven, but used only a part of it, subletting the rest. Defendant commissioner claimed that no deduction from the gross rent paid by plaintiff could be made under the statute, while plaintiff claimed that its rent paid was its gross rent less the amounts received from its subtenants. In upholding the commissioner, the Supreme Court of Errors of Connecticut said: "To permit the rents received to be deducted from the rent paid would be to eliminate from the scope of the tax act an item of income which the law clearly contemplates should be taxed as well as to exempt from taxation a part of the rental paid. As for double taxation, while it is true that the money paid to the plaintiff by the corporate subtenants might be taxed to it as income and to them as rent paid, they are separate entities and are each being taxed on the business being done by each, in the computation of which, as to each, the rent paid by it is an element to be included. Furthermore, the legislature has the power to provide for double taxation although this result will be avoided where the terms of the statute are doubtful. State v. Murphy, 90 Conn. 662, 666, 98 A. 343. The terms of this statute are not doubtful. Rent received is income. 26 U. S. C. A. Int. Rev. Code § 22, p. 43. Rent paid may not be deducted. Cum. Supp. 1935, § 419c. It follows that the computation of the defendant is correct." *House of Hasselbach, Inc. v. McLaughlin, Tax Com'r.*,* 18 A. 2d 367. Matthew A. Reynolds and John R. Thim of New Haven, for appellant. Leo V. Gaffney, Asst. Atty. General and Francis A. Pallotti, Attorney General, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Connecticut, page 273.**

Illinois.

"Business situs" theory of assessment of intangibles ruled applicable to bank deposits assessed in 1936, although specific method followed by assessor was held illegal. Appellant company had filed no schedule of personal property with the assessor of Cook County for the year 1936. The assessor made no examination of the books and records of the appellant located there, nor inspection of the property at its office in Chicago, but made an assessment by estimate in the columns of the return having the following headings: "Furniture and Fixtures," $500. "Net Credits," $239,404. "All other personal property," $267,564. No assessment was made of money or bank deposits as such. A fifty per cent penalty was imposed for failure to file a schedule. The portion of the tax based on the assessment of furniture and fixtures was paid. There were bank deposits arising out of the business activity of the company in Illinois, amounting to $470,000, which, the Supreme Court of Illinois noted, "it should have listed." "Not having done so, it was the duty

of the assessor to list it as money, in the proper column for assessment as such. The question is: Was it illegal to assess this fund or any part of it as 'Net credits,' or 'All other personal property,' or did the assessor comply fully with the law in making it as he did? The assessment of $239,404, as net credits cannot, as we have seen, under the decisions of this court, include moneys in bank, and such was an illegal assessment, since appellant owned no net credits." The court posed the further question: "Does the listing 'All other personal property,' assessed at $267,564, comply with the requirements of the act, or, since the property shown by the record to have been owned by appellant was money on deposit, should the assessment of it have been made in the column prescribed by the State Tax Commission and designated 'Moneys or moneys in bank'?" The court concluded that this method of assessment was also illegal, observing that the form contained thirty-nine columns for the listing of types of personal property in addition to that headed "Other personal property," "clearly meaning personal property of a character not included in the other thirty-nine columns." Said the court: "If the assessor had reason to believe, from available information, that these bank deposits existed, he had a right to assess them in the column 'Moneys or moneys in bank.'" "If the assessor had reason, based on information, to believe that appellant had personal property of a character not designated in the thirty-nine columns, he had the right to enter it in the column 'Other personal property.' If he had no such knowledge or information, he had no right to make such assessment, since to do so would be on mere chance or conjecture." While holding the method followed by the assessing authorities illegal, the court, after a discussion of the "business situs" theory of the taxation of intangibles, indicated that the bank deposits referred to had "acquired a situs in this State, and were, therefore, under the jurisdiction of the taxing authorities of the office of appellant in Cook County." *People v. McGraw Electric Co.*,* 30 N. E. 2d 903. Ross & Watts (Clarence H. Ross and Melvin A. Hardies, of counsel), of Chicago, for appellant. Thomas J. Courtney, State's Atty., (Marshall V. Kearney, Jacob Shamberg, William P. Kearney and Brendan Q. O'Brien, of counsel), of Chicago, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Illinois, page 2810.**

Changes in Delaware Corporation Law

Senate Bill No. 50, Laws of 1941, has effected a number of comparatively minor changes in several sections of the Delaware Corporation Law. Sections affected are:

Secs. 2; 5; 10; 26; 28; 38; 39; 40; 41; 42; 59; 59B; 60; 61; 64; 77A; 86.

A new section has been added, Sec. 59C, entitled "Consolidation or Merger of Non-Stock, Non-Profit Corporations; Proceedings for."

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

NEW YORK. Docket No. 741. *Klaxon Co. v. Stentor Electric Mfg. Co.*, 115 F. 2d 268. (The Corporation Journal, April, 1941, page 366.) **Appeal filed, February 3, 1941. Certiorari granted, limited to the first question presented by the petition, March 3, 1941.** (The "first question" is: *"Whether a provision of the New York Civil Practice Act regarding monetary interest is applicable to an action in the Federal District Court for Delaware?"*)

VIRGINIA. Docket No. 676. *Caskey Baking Company, Inc. v. Commonwealth of Virginia*, 10 S. E. 2d 535. (The Corporation Journal, April, 1941, page 377.) Sale and delivery of products from trucks—validity of license tax on peddler selling to licensed dealers. **Appeal filed, January 6, 1941. Probable jurisdiction noted, February 3, 1941. Argued, April 2, 1941.**

* Data compiled from CCH **U. S. Supreme Court Service**, 1940-1941.

Regulations and Rulings

COLORADO—The State Treasurer has issued Supplemental Rule No. 15, relating to the sales tax, under which it is provided that "all sales made by out-of-state vendors wherein the orders for the merchandise are taken within Colorado by resident representatives of such vendors, the order approved by the vendor out of the State and the merchandise shipped direct from out of this State to the purchaser in this State, and payment therefor is remitted by the purchaser direct to the seller, the agent merely being paid a commission, are subject to the sales tax." The Rule also indicates that "where a Colorado vendor sells merchandise to purchasers in other states, under circumstances showing the reverse of the facts above set forth, that is, where the sales are made to purchasers in other states through resident representatives in other states, the Colorado Sales Tax will not apply." (Colorado Corporation Tax (CT) Service, ¶ 59-514.)

KENTUCKY—The Attorney General of Kentucky has rendered an opinion to the effect that a foreign corporation coming into Kentucky to do work on an air field leased by the Federal Government from a municipality must comply with the statutes in regard to "doing business." (Kentucky CT, ¶ .409.)

The Department of Revenue has recently promulgated a complete set of Income Tax Regulations. (Kentucky Corporation Tax (CT) Service, pages 1385-5 to 1385-13.)

Gasoline purchased by a Kentucky dealer and exported to another state has been ruled by the Attorney General not to be subject to the gasoline tax. (Opinion of Attorney General to Commissioner of Revenue, Kentucky CT, ¶ 40-905.)

MARYLAND—The Attorney General has recently ruled that a foreign corporation whose activities within the external boundaries are confined to Federal areas, is not required to qualify as a foreign corporation under the provisions of Article 23, of the Code. (Opinion of Attorney General to the State Tax Commission, Maryland CT, ¶ .409.)

A mortgage securing bonds issued in exchange for outstanding promissory notes is subject to the recordation tax. (Opinion of Attorney General, Maryland CT, ¶ 48-519.)

MASSACHUSETTS—The Commissioner of Corporations and Taxation has recently indicated that he has "cancelled all existing rules and regulations heretofore issued under the provisions of chapter 62 of the General Laws, the personal income tax law, under the provisions of chapter 63 of the General Laws, the corporation tax law, under the provisions of chapter 64 of the General Laws, the stock transfer law, and under the provisions of chapter 64A of the General Laws, the gasoline tax law. (Massachusetts CT, page 1025.)

MONTANA—Corporations, in making returns under the corporation license act, must include the net income from intrastate business and that portion of their net income from interstate business as may be properly allocated to Montana. (Opinion, Attorney General, Montana CT, ¶ 1541.)

NEW JERSEY—Motor fuels sold to contractors having "cost-plus" contracts with the Federal Government are subject to the gasoline tax and are not exempt as sales to the Federal Government. (Ruling, Director, Division of Motor Fuels, 44-001.)

NEW YORK—The Department of Taxation and Finance has ruled that corporate stocks owned by the British Government for governmental purposes may be sold or transferred in the State of New York without the payment of the stock transfer tax imposed by sections 270 and 270-a of the Tax Law. (New York CT, 200-413.)

A recent ruling of the Special Deputy Comptroller of New York City is to the effect that, for the purposes of the City Gross Receipts Tax, receipts arising out of goods sold by a New York City manufacturer to an out-of-state customer constitute wholly taxable receipts where the customer has instructed the manufacturer to deliver the merchandise to the customer's New York City warehouse. (New York CT, 220-143.)

TEXAS—The Attorney General has rendered an opinion to the effect that the Secretary of State should not require a beginner domestic corporation to file an affidavit providing substantially the same information as the annual report required of other corporations, or cause the records of such corporation to be closed at a date prior to May 1, and from such affidavit determine and collect the franchise tax, but should follow his established practice of advising the corporation at the time of incorporation of the amount of tax due on May 1 following, based upon the taxable capital disclosed by the charter. (Texas CT, 15-005.)

Some Important Matters for May and June

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15. —Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due on or before June 1.—Dominion Companies.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

IOWA—Report of Transfers of Stock due on or before July 1.—Domestic Corporations.

KENTUCKY—Statement of Existence due on or before July 1.—Foreign Corporations.

Statement of Process Agent due on or before July 1.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MICHIGAN—Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic Corporations.

NEVADA—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax Return and Tax due on or before May 15. —Domestic Corporations.

NEW MEXICO—Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3IT—Article 9-A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations.

OREGON—Annual Report due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before July 1.—Domestic and Foreign Corporations.

TENNESSEE—Annual Privilege (Franchise) Tax Return and Tax due on or before July 1.—Domestic and Foreign Corporations.

Annual Report and Franchise Tax due on or before July 1. —Domestic and Foreign Corporations.

Annual Excise Tax Report and Tax due on or before July 1. —Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VIRGINIA—Income Tax due June 1.—Domestic and Foreign Corporations.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal places of business or chief works are located in other states.

WYOMING—Annual Statement and License Tax due on or before July 1. —Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

Amendments to Delaware Corporation Law, 1941. Contains complete text of the amendments adopted at the 1941 session of the legislature, giving for each one a brief explanation of its purpose and effect.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

What Constitutes Doing Business. (Revised to March 15, 1939.) A 184-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation—completely up-to-date as regards the most recent amendments.

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